THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.A. No. 242 of 1999

Judgment reserved on: 7.12.2005

Date of Decision: January 11, 2006

State of H.P. …Appellant.

Versus.

Prem Chand & anr. .. Respondents.

Coram:
The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. J.S.Guleria, Law Officer.**

For the Respondent(s): **Mr. Vinay Thakur, Advocate.**

Deepak Gupta, J.

This appeal under Section 378 of the Code of Criminal Procedure is directed against the judgment of Chief Judicial Magistrate, Kinnaur in Criminal case No. 60-3/of 1996 decided on 22.9.1998 whereby he has acquitted the accused of having committed offences under Section 41 and 42 of the Indian Forest Act.

The prosecution case in brief is that the Forest Department on the basis of the prior information regarding illicit transportation of timber had started patrolling near Nichar. This party was led by D.F.O.Nichar. There, they found some timber loaded in one truck belonging to the HP.SEB. They waited for a little while and when the truck started moving and had moved about 30 meters, the same was

intercepted and apprehended. According to the forest officials, accused Puran Chand, Junior Engineer in HPSEB, Babhanagar and Dile Chand driver of the truck were travelling in the truck. They recovered 60 scants of Deodar from the truck. The size of 48 scants was 10' x 4" x 1-1/2" and 12 scants were 10' x 6" x 1-1/2". According to the forest officials, the timber was covered by a tarpaulin. It is further alleged that the DFO Nichar asked the Junior Engineer and driver to take the vehicle to the office of D.F.O. Nichar. They refused to do so. He then informed the police and it is alleged that the police came at night about 8 p.m. but in the meantime the driver and the junior engineer ran away from the spot. The investigation was done and after the same was completed, charge - sheet was filed in the Court. The accused were charged with having committed offences under Section 41/42 of the Indian Forest Act.

The prosecution examined a number of witnesses. It is alleged that 71 scants of Deodar were recovered from the accused. The case set up by the defence is that these wooden planks belonged to one Shiam Sukh who had a valid permit and these were being transported since Shiam Sukh is a cousin of an employee of the HPSEB. It is further alleged that Puran Chand was not even present at the spot and was called lateron by the forest officials. The accused led evidence to show that Shiam Sukh had a valid permit and that the timber belonged to him.

PW7 is Ghanshyam Dass Negi, Range Officer, Nichar. He states that when he reached near the Saw Mill of Devta Maheshwar Mandir at Sungra, they found truck No.HPR-7006 parked at a distance of 25- 30 meters from the saw mill and 71 scants were loaded in this vehicle. He further states that when the driver was asked to produce the permit, he stated that the J.E. is responsible. According to this witness, the conductor of the truck was also present. He further stated that despite his request, the truck was not taken to the office of DFO Nichar. Lateron Puran Chand and the driver ran away from the spot. He thereafter lodged the complaint the next day on 17.5.1996.

PW1 Rattan Chand was also a member of the patrolling party. He also states that when the truck was seized, Puran Chand, JE, one conductor and driver Dile Chand were in the truck and could not produce any permit with regard to the timber. He states that thereafter they locked the truck and ran away. In cross-examination, he admits that when the vehicle was being checked, they had called the Pradhan of Sungra village. He also admits that there were many other persons present at the spot including the workers of the saw mill. He could not admit or deny the fact whether the timber in question belonged to Shiam Sukh. He however, denied the suggestion that Shiam Sukh had come to the spot and produced the permit ExD1.

PW2 is Neema Chhering. According to him, the driver of the truck was not the accused and he further deposed that the driver and

conductor ran away from the spot. He further states that there is no illicit felling which has been done in the jungle and there is no complaint of any illicit felling. This witness of the prosecution states that the JE was not present when the truck was intercepted. He states that both the accused were not present when the truck was seized and the JE was called from Sungra. PW3 Manoj is the DFO, Nichar. According to him, he had some prior information about transportation of illicit timber and therefore, he went to the spot. He further states that the vehicle was being driven by the conductor present in Court whose name was stated to be Surjit. According to him, Puran Chand JE and a person who was driving the vehicle were at the spot and there was no other third person. PW4 Partap Chand states that he sawed the timber of the Shiam Sukh which was loaded in the truck and at that time JE, Shiam Sukh and one other person were present. Thereafter Shiam Sukh, JE and the driver who is not present in Court took away the truck. PW8 Harbans Singh, Pradhan Gram Panchayat, Sungra has not supported the prosecution case. According to him Shiam Sukh was present on the spot and was trying to show his permit to the DFO. The DFO was not taking notice of the same. DW1 Shiam Sukh states that the timber belonged to him and he had a valid permit to carry the same. He has produced his permit Ex.D1.

From the evidence, it is clear that there are various contradictions in the prosecution case. It is not clear whether it is

Surjit Singh or Dile Chand who was driving the truck. The presence of Puran Chand, JE at the spot appears to be doubtful. Whereas some of the witnesses states that he was sitting in the truck, other states that he was called from the village and he was not present when the truck was intercepted. It has come in evidence that there are a number of shops and houses near the place where the truck was intercepted. Despite this fact, no independent witnesses were examined. Shiam Sukh has stepped into the witness box and states that he is the owner of the timer and he has a valid permit for the same. This witness was not thoroughly cross-examined by the other side. There are many other gaping holes in the prosecution case. The prosecution has miserably failed to prove their case against the accused. The learned trial Court has rightly acquitted the accused. The appeal is, therefore, dismissed. Bail bonds stand discharged.

January 11, 2006. (Deepak Gupta),
s. Judge.